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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/400,409 09/21/99 KITAGAWA

H 990577/LH

MMC2/0621

EXAMINER

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SIKDER, M

ART UNIT	PAPER NUMBER
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2872

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DATE MAILED:

06/21/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No. 09/400,409	Applicant(s) Kitagawa
Examiner Mohammad Y. Sikder	Group Art Unit 2872

Responsive to communication(s) filed on Sep 21, 1999

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-4 and 11-14 is/are rejected.

Claim(s) 5-10 and 15-20 is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on Sep 21, 1999 is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 2872

## ***DETAILED ACTION***

### ***Drawings***

1. Figures 6-7 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-4, 11-14 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Fig. 6 in view of Fig. 7 of the specification as provided by the applicant.

Fig. 6 of the prior art as described in the disclosure by the applicant shows a light-emitting portion 121, a rotatable disk scanner 120 having a plurality of pinholes formed in a disk for the light beam to pass therethrough, a confocal optical system for conjugating said first position and

Art Unit: 2872

a second position on the specimen to cause the light beam having passed through said pinholes to be radiated onto the specimen, and to cause a light beam from the specimen to form an image on said disk, a camera 125 for photographing, means 123 for comparing, as claimed in claims 1, 11.

Thus, Fig. 6 of the prior art as described in the disclosure by the applicant discloses the invention substantially as claimed except for:

- a) means for generating an exposure time signal representing an exposure time of said camera; means for generating a rotational period signal representing a rotational period of said disk scanner, as claimed in claims 1, 11,
- b) means for automatically changing said certain condition on the basis of the comparison result, as claimed in claims 2, 12,
- c) means for displaying a message for instructing a change of said certain condition on the basis of the comparison result, as claimed in claims 3, 13,
- d) said certain condition comprises a rotational speed of said disk scanner, as claimed in claims 4, 14.

Fig. 7 of the specification shows:

- a) means for generating an exposure time signal representing an exposure time of said camera; means for generating a rotational period signal representing a rotational period of said disk scanner, as claimed in claims 1, 11,

Art Unit: 2872

- b) means for automatically changing said certain condition on the basis of the comparison result, as claimed in claims 2, 12,
- c) means for displaying a message for instructing a change of said certain condition on the basis of the comparison result, as claimed in claims 3, 13,
- d) said certain condition comprises a rotational speed of said disk scanner, as claimed in claims 4, 14.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use means for generating an exposure time signal representing an exposure time of said camera; means for generating a rotational period signal representing a rotational period of said disk scanner, as claimed in claims 1, 11, means for automatically changing said certain condition on the basis of the comparison result, as claimed in claims 2, 12, means for displaying a message for instructing a change of said certain condition on the basis of the comparison result, as claimed in claims 3, 13, said certain condition comprises a rotational speed of said disk scanner, as claimed in claims 4, 14, as disclosed in Fig. 7 in the device of Fig. 6 to achieve the device as claimed, because the use of such means would provide better exposure of the device.

Art Unit: 2872

***Allowable Subject Matter***

4. **Claims 5-10, 15-20 are objected** to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***REASONS FOR ALLOWANCE***

The following is an Examiner's Statement of Reasons for Allowance:

The claims are allowable over the prior art for at least the reason that the prior art fails to reasonably teach or suggest means for switching whether to control the rotational speed of said disk scanner in association with the exposure time, as claimed in claims 5, 15, a rotation sensor for detecting a rotational position of said disk scanner, wherein the rotational period signal is calculated based on a detection result by said rotation sensor, as claimed in claims 6, 16, said certain condition comprises an intensity of the light beam emitted by said light-emitting portion, as claimed in claims 8, 18, as set forth in the claimed combination.

***CONTACT INFORMATION***

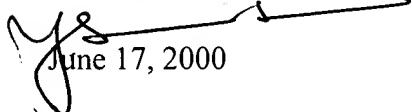
Papers related to this application may be submitted to Group 2870 by facsimile transmission. Papers should be faxed to Group 2870 via the PTO Fax center located in the Crystal

Art Unit: 2872

Plaza 4. Faxing of such papers must conform with the notice published in the official Gazette, 1096 OG 30 (November 15, 1989). The CP-4 Fax Center number is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application should be directed to M. Sikder whose telephone number is (703) 305-5471.

M. Sikder

A handwritten signature in black ink, appearing to read "MS".

MS  
June 17, 2000